

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C. 20591

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| In the matter of the petition of |) | |
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| AIR TRANSPORT INTERNATIONAL, LLC |) | |
| |) | FAA Regulatory Docket |
| for an exemption from Federal |) | No. FAA-2003-14323 |
| Aviation Regulation 121.313(j)(1) |) | |
| Title 14, Code of Federal Regulations. |) | |
| _____ |) | |

PETITION OF AIR TRANSPORT INTERNATIONAL, LLC FOR RECONSIDERATION OF
DENIAL OF EXEMPTION

Pursuant to 14 C.F.R. § 11.101, Air Transport International, LLC (ATI) hereby petitions the FAA to reconsider its February 12 denial of ATI's Request for Exemption from the requirements of 14 C.F.R. § 121.313(j)(1). The standards for reconsideration under §11.101 are as follows: (a) There are significant additional facts not presented in the earlier petition; (b) An important factual error was made by FAA in its denial of the original petition; and/or (c) An incorrect interpretation of a law, regulation or precedent was made by the FAA. This petition will demonstrate that all of these standards have been fulfilled in the case of ATI. In particular:

- FAA misinterpreted the "public interest" as applied to ATI's unique situation.
The public interest is served by allowing ATI to continue its contract with the Air Mobility Command (AMC) and the vital service that ATI is providing by supporting the Nation's military.

- The FAA erred in finding that ATI's exemption request would not provide an equivalent level of safety and security. ATI's current screening process, which

already limits access to its aircraft, combined with the existing flight deck compartment doors on ATI's aircraft, which has proven effective in limiting access to the flight deck, is more than sufficient to accomplish the safety and security goals of Congress and the FAA.

- The FAA also erred in finding that ATI's DC-8 all-cargo and combination passenger and cargo (so-called combi) operations were "similar in all material respects" to the scheduled passenger operations of American Airlines, whose exemption request was denied by FAA (*see* Exemption Denial No. 7970).
- There are significant additional facts that must be taken into account by FAA in reconsidering the denial of ATI's request. In particular, it has now become absolutely clear that, for certain aircraft types (e.g., the DC-8s operated by ATI), there is no FAA approved cockpit door design or hardware to meet the enhanced cockpit door requirements imposed by §121.313(j) despite intense industry efforts to comply with this requirement. As a result, blind adherence to the April 9 compliance date is unrealistic and unjustly penalizes operators such as ATI.

Background

The events of September 11, 2001 gave cause for the creation of Special Federal Aviation Regulation (SFAR) 92-4. The regulation endeavors to prohibit unauthorized persons from entering the flight deck by forceful means, and purports to grant to operators the time necessary to comply with the appropriate provisions of 14 C.F.R. § 121 by deferral of certain airworthiness requirements for a time deemed, at its inception, to be adequate for industry to develop and install appropriately designed doors. *See* 66 Fed. Reg. 51547 (October 9, 2001). This intent was further evidenced by subsequent Federal Register explanatory language, "[t]he FAA established an

18-month duration for the portions of the SFAR concerning airworthiness requirements. We expected this would give the industry sufficient time to design and install more permanent changes to door security and establish procedures...,” *see* 67 Fed. Reg. 12821 (March 19, 2002). It has become clear that, for certain aircraft types, such as the DC-8 freighters and DC-8 combis operated by ATI, the FAA’s expectations have not been fulfilled.

ATI is a Supplemental Air Carrier certificated under the applicable provisions of 14 C.F.R. § 119. ATI holds both passenger and cargo charter authority. ATI provides substantial DC-8 all-cargo and combi service for USAF’s Air Mobility Command (AMC). On the “civilian” side, ATI’s principal customer is its corporate parent, BAX Global, which charters ATI’s DC-8 freighters to support BAX’s vast worldwide airfreight forwarding activities. ATI also operates for other customers, including those whose central business is the movement of certain animals, usually horses. ATI does not currently operate public charter flights. Therefore, all of ATI’s flights are either all-cargo flights for AMC, BAX and other civilian charterers, or combi passenger and cargo flights conducted on behalf of the AMC as private charters. As such, all personnel who operate, maintain or travel aboard ATI are screened in accordance with directed procedures, and belong to well-defined and known groups of people. This process includes any personnel who are carried under the provisions of 14 C.F.R. § 121.583.

The FAA Misinterpreted the Public Interest Standard

ATI submits that the FAA erred in its assessment of the public interest element of ATI’s petition . In particular, the aircraft for which ATI seeks this exemption will be utilized to support our military during times of conflict and provide support to our military personnel to enable mission accomplishment. These operations are in our Nation’s highest interest and should have been considered by the FAA in ATI’s original request for exemption.

As discussed *supra*, ATI’s passenger operations are comprised entirely of private charter flights with the Air Mobility Command, carrying military personnel, their dependents or military

contractors. Its cargo flights are conducted in accordance with all applicable Transportation Security Administration and FAA directives.

As our Nation moves closer to conflict, ATI's support of our military becomes increasingly more important. ATI plays a direct role in moving people and material for the military to locations that need supplemental lift because the military's resources continue to be limited. As part of the Civil Reserve Air Fleet (CRAF), ATI could be called upon at any time to provide increased levels of support to the military in direct support of military action.

Granting the requested exemption to ATI due to its role in the civilian market as an all-cargo carrier also serves the public interest. No additional risks exist now for private charters or all-cargo operations that have not existed since September 11, 2001. Movement of cargo is critical to manufacturing, to service industries and to virtually all other commercial endeavors including research and development laboratories. The Nation has re-structured its inventory control methods based upon the air-cargo industry and its ability to operate. A significant portion of the American public depends upon the cargo industry directly for their livelihood, and an even larger segment depends on the cargo industry to continue business on a day-to-day basis.

In these circumstances, the refusal to grant ATI an exemption to delay the April 9, 2003 implementation date of 14 C.F.R. 121.313(j) runs counter to the public interest in maintaining vital services for AMC and the shipping public as a whole.

FAA Erred in Relying on its Denial of Exemption to American

The FAA erred in denying ATI's request for exemption based on "circumstances similar in all material respects" to its Denial of Exemption to American Airlines. ATI's all-cargo and combi operations are unique and readily distinguishable from American's A300 scheduled passenger operations for which American sought exemption relief. FAA's reliance on the Denial of Exemption to American is misplaced. Even if the circumstances of ATI's and American's applications were similar, the FAA has erred in both ATI's and American's cases in interpreting

the meaning of “as soon as possible,” contained in Pub. L. No. 107-71 otherwise known as the Aviation Transportation Security Act (ASTA) enacted November 19, 2001

Additional Factual Information Requiring Reconsideration

While the original date for having installed reinforced cockpit doors seemed reasonable at the time, it has become clear that, for certain aircraft, this date has proven to be unrealistic. To date, no doors designed for the purposes of 14 C.F.R. § 121.313(j)(1) have been approved by the FAA for the DC8 aircraft that ATI operates. The reasons for the lack of FAA Approval of such doors are complex and may well be unavoidable despite the diligent and timely efforts of ATI and its suppliers to achieve compliance. ATI submits that Congress foresaw this eventuality. Pub. L. No. 107-71, *supra*, is persuasive in conveying Congressional intent that an FAA mandate for strengthening the doors was to reflect an implementation standard of reasonableness. This intent to adopt a reasonable implementation standard has been consistently reflected in the FAA’s rulemaking actions to date.

In the FAA’s denial of an exemption to ATI, the FAA stated that “[t]his date has been known for a year and one-half, and security considerations overshadow the burden on individual operators who have reason to request an exemption...,” but the FAA does not further elaborate or explain why such “overshadowing” exists. The external security conditions created by ATI’s exemption request as they apply to flight operations are unchanged from those conditions that will exist after April 9, 2003. We are at a loss to understand the “overshadowing” that the FAA refers to in its denial, and perplexed by the FAA’s conclusions. Our preliminary research indicates that where potential breaches of the cockpit have occurred since September 11, 2001, those events were controlled to a satisfactory conclusion by the flight crew and passengers; significantly these events occurred on scheduled operations carrying members of the general public, operations that ATI does not conduct. Further, the FAA apparently has not completed an analysis of the effectiveness of cognizant passengers in effecting functional security where

attempts are made to interfere with flight crews. Recent history strongly indicates that the ability of unauthorized persons to enter the flight deck has been substantially, if not completely, eliminated by these passengers. We are aware of no case where the cockpit door has been as effective as these passengers have been in restraining persons who appear to be a threat to the security of the airplane, its crew or passengers. The FAA fails to consider the changed security culture of the traveling public; this change alone has proven to be one of the most effective security measures yet. However, even if the FAA believes that existing security risks will be greater after April 9, 2003, the agency has failed to properly consider the scope and nature of ATI's flight operations where all personnel allowed onboard an ATI aircraft are members of known groups, such as the military, or are company employees or properly screened contractors.

The FAA's conclusion implies operator responsibility for the lack of approval for the doors designed to meet the requirements of 14 C.F.R. § 121.313(j). The FAA should be aware that the agency's cumbersome approval process has been the pacing factor, not the operators themselves who have acted diligently. Granted, the April 9, 2003 compliance date has been known for a year and one-half; however, it has also been known by the FAA, and the FAA has not responded in ways that have made the date a reasonable compliance date for particular aircraft types; hence the need for exemption relief.

By its continued failure to recognize these additional facts bearing on the nature of the security risk and the unreasonableness of the April 9, 2003 compliance date as applied to ATI, the FAA has erred in denying ATI's exemption request. The legislation of PL 107-71 evidenced Congressional intent by inclusion of the words "as soon as possible"; in these circumstances, the FAA erred in finding that a firm date of April 9, 2003 is "possible" for ATI as an effective date for implementation of 14 C.F.R. § 121.313.

FAA Erred in Determining the Absence of an Equivalent Level of Safety and Security

ATI submits little or no risk is associated with the issuance of the requested exemption due to the nature of ATI's operations; ATI further submits that an equivalent level of safety and security is provided by such an exemption, particularly in view of the temporary nature of its exemption request. ATI's assertions are supported by empirical data generated since September 11, 2001, where no breaches of the cockpit have occurred in any operations similar to those conducted by ATI.

ATI is also aware of a proposal for an alternate means of compliance to 14 C.F.R. 121.313(j) that relies solely upon an approved screening process, such as ATI currently conducts. Reportedly this proposal has been favorably received by the FAA staff and is awaiting final approval – which lends substantial credence to ATI's current screening process as a means of achieving an equivalent level of safety and security.

Conclusion

ATI respectfully requests reconsideration of its request for an exemption to 14 C.F.R. 121.313(j)(1) in light of the additional information provided, the errors made by the FAA in fact and in legal interpretation and the FAA's erroneous determination of public interest and equivalent levels of safety and security, as discussed above.

Respectfully submitted,

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